

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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In the Matter of)

Further Forbearance from)
 Title II Regulation for Certain)
 Commercial Mobile Radio Service)
 Providers)

GN Docket No. 94-33

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

REPLY COMMENTS OF
AMSC SUBSIDIARY CORPORATION

AMSC Subsidiary Corporation ("AMSC") hereby submits its reply to the comments filed on the Notice of Proposed Rulemaking in the above-referenced docket.^{1/} AMSC herein supports those parties recommending that the Commission forbear from applying the Telephone Operator Consumer Services Improvement Act ("TOCSIA")^{2/} to Commercial Mobile Radio Services ("CMRS") providers. As discussed below, forbearance from TOCSIA is particularly warranted in the case of Mobile Satellite Services ("MSS").

AMSC, the FCC licensee for the U.S. MSS and AMS(R)S (aeronautical safety service) system,^{3/} is preparing for the launch of its first satellite and the commencement of full

^{1/} Notice of Proposed Rulemaking, Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers, 9 FCC Rcd 2164 (1994) ("NPRM").

^{2/} 47 U.S.C. § 226 (Supp. V 1993).

^{3/} See Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989); Final Decision on Remand, 7 FCC Rcd 266 (1992), aff'd sub nom., Aeronautical Radio, Inc. v. FCC, 983 F.2d 275 (D.C. Cir. 1993).

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service operations in 1995. AMSC's MSS system will operate as follows: communications originated by a mobile user will be transmitted at L-band to the satellite and then downlinked from the satellite on Ku-band, through a fixed gateway operated by AMSC (located in Reston, Virginia), and into the public switched telephone network. AMSC expects its retail charges for standard mobile telephone services in the continental United States to be approximately \$1.45 per billable minute. Long distance charges for calls terminating within the United States are included in the per-minute rate. In addition to its subscriber-based services, AMSC (or companies reselling AMSC service) may provide operator services, as defined in TOCSIA, from public mobile phones on cruise ships or trains.

Section 332 of the Communications Act gives the Commission the broad discretion to forbear from applying TOCSIA to specific types of CMRS providers, if such forbearance meets a three part test: (i) enforcement is not necessary to assure just and reasonable rates; (ii) enforcement is not necessary to protect consumers; and (iii) forbearance would be consistent with the public interest.^{4/} In the case of MSS services to which TOCSIA

^{4/} 47 U.S.C. § 332(c)(1)(A), as amended by Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002(b)(2)(A)(iii), 107 Stat. 312, 393 (1993).

might be applied,^{5/} the three part test is satisfied and forbearance from TOCSIA is appropriate.^{6/}

Enforcement of TOCSIA is not necessary to assure just and reasonable rates. MSS rates for public mobile phone calls will be set at reasonable levels to assure survival in the competitive CMRS market. Consumers using an MSS phone are largely paying for the cost of providing the satellite links; the long distance

^{5/} There remains a question whether TOCSIA applies to mobile phone services. See Declaratory Ruling, MSD-92-14, 8 FCC Rcd 6171 (Com. Car. Bur. 1993), recon. pending (hereinafter Declaratory Ruling); see, e.g., GTE Airfone, Inc., Petition for Reconsideration or Waiver, MSD-92-14 (September 27, 1993) (hereinafter GTE TOCSIA Petition for Recon.); Waterway Communications System, Inc., Petition for Reconsideration or for Alternative Relief, MSD-92-14 (September 27, 1993) (hereinafter WATERCOM TOCSIA Petition for Recon.); In-Flight Phone Corporation, Comments in Support of GTE Service Corporation's Petition for Reconsideration or Waiver, MSD-92-14 (October 6, 1993) (hereinafter In-Flight TOCSIA Comments).

Review of the Comments in this proceeding confirm an overwhelming support for the forbearance from TOCSIA for all CMRS. See, e.g., Comments of Comments of GTE Service Corporation at 6-8 (June 27, 1994); ALLTEL Mobile Communications, Inc. at 3 (June 27, 1994); Bell Atlantic Mobile Systems, Inc. at 8-9 (June 27, 1994); McCaw Cellular Communications, Inc. at 4-6 (June 27, 1994); The Southern Company at 6 (June 27, 1994); Southwestern Bell Mobile Systems, Inc. at 10-16 (June 27, 1994).

^{6/} See, e.g., Comments of In-Flight Phone Corporation, GN Docket No. 94-33, at 3-8 (June 22, 1994) (TOCSIA forbearance for 800 MHz Air-Ground Radiotelephone Service); Comments of Waterway Communications System, Inc., GN Docket No. 94-33, at 4-9 (June 24, 1994) (TOCSIA forbearance for Automated Maritime Telecommunications System). See also Comments of Waterway Communications System, Inc., GN Docket No. 93-252, at 10-12 (November 8, 1993); GTE TOCSIA Petition for Recon. at 4-9; WATERCOM TOCSIA Petition for Recon. at 9-11; In-Flight TOCSIA Comments at 10-13. Cf. GTE Service Corporation, Petition for Reconsideration or Clarification, GN Docket No. 93-252, at 2-6 (May 19, 1994) (Commission should forbear from applying TOCSIA requirements to all CMRS providers, using air-to-ground as example).

charges are insignificant in comparison.^{7/} Ironically, by enforcing TOCSIA obligations on MSS, consumers may actually pay higher rates because they would be paying the same rate for the satellite link, plus their long distance carrier's charge.^{8/} Thus, applying TOCSIA to MSS would contravene the statute's underlying goal of assuring consumers the best rates.^{9/}

Enforcement is not necessary to protect consumers. No evidence has been presented of consumer abuses arising from public mobile phone services, or consumer complaints regarding public mobile phone services.^{10/} Users of public mobile phones view these services as end-to-end services, with no expectation that calls will be handled by any particular carrier.^{11/} Furthermore, services such as MSS public phones will provide the essential service link between the mobile terminal user, the satellite, and the ground station gateway; the user does not have a choice for the satellite link.

^{7/} Accord GTE TOCSIA Petition for Recon. at 11-12 ("Well over 90 percent of the costs of providing Airfone service derive from the capital investment and operating expenses of Airfone's proprietary ATG system.").

^{8/} It is unclear how an interexchange carrier would rate a call that has been routed through the AMSC earth station in Reston.

^{9/} The Commission should consider this paradox in light of its concerns over the bundling of long distance with airtime, as expressed in the NPRM, 9 FCC Rcd at 2169 n.57 (citing Declaratory Ruling, 8 FCC Rcd at 6174-75 n.32).

^{10/} See, e.g., Comments of GTE Service Corp. at 6; Bell Atlantic at 9; McCaw at 4 & n.8; Southwestern Bell at 11-12.

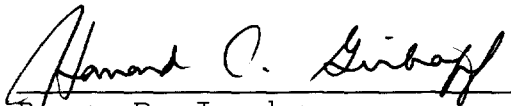
^{11/} Accord Comments of WATERCOM at 5; GTE TOCSIA Petition for Recon. at 9.

Finally, forbearance from TOCSIA with respect to MSS public mobile phone services is consistent with the public interest. As previous commenters have noted, retrofitting of mobile services networks to comply with the TOCSIA provisions would far surpass the marginal incremental revenues earned by public mobile phone providers from serving this category of users.^{12/}


Therefore, the Commission should forbear from applying TOCSIA requirements to CMRS providers, including MSS providers.

Respectfully submitted,

AMSC SUBSIDIARY CORPORATION


Bruce D. Jacobs
Glenn S. Richards
Howard C. Gribhoff
Fisher Wayland Cooper Leader
& Zaragoza L.L.P.
2001 Pennsylvania Ave., N.W.
Suite 400
Washington, DC 20006
(202) 659-3494

Its Attorneys


Lon C. Levin
Vice President and
Regulatory Counsel
10802 Park Ridge Boulevard
Reston, VA 22091
(703) 758-6000

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^{12/} See, e.g., Comments of GTE Service Corp. at 7 (compliance with TOCSIA's branding requirements alone would impose costs of over \$20 million on the cellular industry, and costs of a higher magnitude for the multitude of other CMRS providers); Comments of WATERCOM at 8; Comments of In-Flight at 6-7.

CERTIFICATE OF SERVICE

I, Renee Gray, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza hereby certify that on this 12th day of July, 1994, I served a true copy of the foregoing "**REPLY COMMENTS**" by first class United States Mail, postage prepaid, upon the following:

Rodney L. Joyce, Esq.
Ginsburg, Feldman & Bress
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
(counsel for In-Flight Phone Corp.)

William J. Gordon
V.P. Regulatory Affairs
In-Flight Phone Corp.
1146 19th Street, N.W.
Suite 200
Washington, D.C. 20036

Gail L. Polivy, Esq.
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
(counsel for GTE Service Corporation)

Martin W. Bercovici, Esq.
Keller & Heckman
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
(counsel for Waterway Communication
System, Inc.)


Carolyn C. Hill, Esq.
Alltel Service Corporation
655 15th Street, N.W.
Suite 220
Washington, D.C. 20005

John T. Scott, III, Esq.
Charon J. Harris, Esq.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2595
(counsel for Bell Atlantic Mobile
Systems, Inc.)

Cathleen Massey, Esq.
Senior Regulatory Counsel
McCaw Cellular Communications, Inc.
1150 Connecticut Avenue, N.W.
4th Floor
Washington, D.C. 20036

Carole C. Harris, Esq.
Christine M. Gill, Esq.
Tamara Y. Davis, Esq.
Keller & Heckman
1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
(counsel for The Southern Company)

Wayne Watts, Esq.
Carol L. Tacker, Esq.
Karen B. Peck, Esq.
Southwestern Bell Mobile Systems, Inc.
17330 Preston Road
Suite 100A
Dallas, TX 75252



Renee Gray